IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

DEVELOPERS SURETY AND)	
INDEMNITY COMPANY,)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:11-cv-4457
)	
KIPLING HOMES, L.L.C. and)	
EDWARD C. MATTOX,)	
)	
Defendants.)	

MOTION FOR PROVE-UP AND ENTRY OF JUDGMENT

Developers Surety and Indemnity Company ("DSIC"), by its undersigned counsel, submits this Motion for Prove-Up and Entry of Judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure against the Defendants Kipling Homes, L.L.C. and Edward C. Mattox (collectively, "Defendants") jointly and severally, and in support, states as follows:

- 1. DSIC brought this lawsuit against the Defendants arising out of an indemnity agreement between DSIC and the Defendants in which the Defendants agreed to indemnify DSIC from any and all liability arising out of claims on surety bonds issued on behalf of Defendant Kipling Homes, L.L.C. The lawsuit seeks an order requiring the Defendants to post \$1,878,919.00 in collateral with DSIC.
- 2. On September 8, 2011, this Court granted DSIC's Motion for Entry of Default against the Defendants and set the matter for prove-up on September 22, 2011 at 9:00 a.m.

3. Since filing this lawsuit on June 30, 2011, DSIC has incurred liquidated

losses of \$1,241,384.10 and \$45,946.37 in expenses which total \$1,287,330.47 in losses

under the surety bonds. See Affidavit of James W. Kisner, attached as Exhibit A.

4. DSIC seeks entry of a judgment amount against the Defendants in the

amount \$1,287,330.47 and ordering the Defendants to post \$591,588.53 in collateral with

DSIC (this amount represents the original demand to post \$1,878,919.00 in collateral

when the lawsuit was filed minus the \$1,287,330.47 loss.) A proposed Judgment Order is

attached as **Exhibit B**.

WHEREFORE, Developers Surety and Indemnity Company pray for entry of

judgment against the Defendants Kipling Homes, L.L.C. and Edward C. Mattox in the

amount of \$1,287,330.47 and ordering the Defendants to post an additional \$591,588.53

in collateral with DSIC.

DATED: September 19, 2011

Respectfully submitted,

DEVELOPERS SURETY AND

INDEMNITY COMPANY

By: /s/ Michael J. Dudek

One of its attorneys

T. Scott Leo

Michael J. Dudek

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CERTIFICATE OF SERVICE

I hereby certify that on September 19, 2011 I caused copies of **Motion Prove-Up and Entry of Judgment** to be filed pursuant to the Federal Rules of Civil Procedure and Local Rules with the Clerk of the United States District Court, Northern District of Illinois, using the CM/ECF system. Copies will be served by certified mail by depositing copies of the same, at One North LaSalle Street, Chicago, Illinois, with proper postage pre-paid, upon the following:

KIPLING HOMES, LLC R.A.: Pasquale Selvaggio 611 W. Jefferson St., Ste 201 Shorewood, Illinois 60431 Edward C. Mattox 24844 Lake Forrest Lane Shorewood, Illinois 60431

> /s/ Michael J. Dudek One of his Attorneys

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